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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/853,692	05/14/2001	Naoki Abe	040373/0303	6572
22428	7590	04/05/2006	EXAMINER	
FOLEY AND LARDNER LLP			LOFTIS, JOHNNA RONEE	
SUITE 500			ART UNIT	
3000 K STREET NW			PAPER NUMBER	
WASHINGTON, DC 20007			3623	

DATE MAILED: 04/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/853,692	Applicant(s) ABE ET AL.	
	Examiner Johnna R. Loftis	Art Unit 3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 3-13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The following is a first office action upon examination of application number 09/853692. Claims 1 and 2 are pending and have been examined on the merits discussed below. Claims 3-13 have been withdrawn from consideration.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 2 recites the limitation "the number of past marketing intervals" in lines 18 and 19 of page 22. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

5. Claims 1 and 2 are rejected under 35 U.S.C. 102(a) as being anticipated by Chen and Chen, "The Optimal Penetration Pricing Strategy Model Under the Dynamic Demand Function".

As per claim 1, Chen and Chen teaches at each point in time, carrying out marketing for fixed time intervals using a price that is one step size higher than, and a price that is one said step size lower than, an optimal price estimate at that time; comparing profits obtained as a result of said marketing; updating the optimal price estimate at time in question in a direction of a price at

which greater profit was obtained; and repeating said marketing step, said comparison step, and said updated step (page 144 – relation between price, quantity and demand is analyzed; at higher price actual number purchased lowers, whereas at a lower price actual number purchased raises; page 148 and 149, penetration pricing strategy is used, in order to increase sales quantity a manufacturer keeps the unit selling price of a product equal to its cost during an introduction stage, then sensitivity analysis is used to analyze optimal solution to see effects of variation of parameters on optimal pricing and total profit; page 150, variation in promotion period and unit cost affects maximization of total profits and affects manufacturers decision making about the optimal pricing of a product).

As per claim 2, Chen and Chen teaches said step size is determined by raising the number of past marketing time intervals to minus α power, where α is a positive number that is less than 1 (see pages 145 and 150 – the time interval (or promotion period) is a decreasing function of time t . note: in applicants specification, 1 to the minus alpha power is equated to delta, which is a decreasing function of the trial number.).

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Zhou, Wen – The magnitude, timing and frequency of firm choices: Essays on commercial breaks and price discounts

De la Maza, Michael – How do firms transition between monopoly and competitive behavior? An agent based economic model. (chapter 3).

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Kopalle, Praveen et al – The dynamic effect of discounting on sales: empirical analysis and normative pricing implications

Yamana, Reizo - JP408235246 – method and device for analyzing profit factor

Hunt – US 5,794,220 – method and means for ranking and pricing items

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Johnna R. Loftis whose telephone number is 571-272-6736. The examiner can normally be reached on M-F 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on 571-272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JL

3/31/2006




SUSANNA M. DIAZ
PRIMARY EXAMINER

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